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April 30, 1981

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Richard L. Dewsnup, Esq.
Department of Natural Resources
321 East 400 South
Salt Lake City, Utah 84111

Re: Great Salt Lake Minerals and Chemicals Corporation--
Division of Wildlife Resources

Dear Richard:

On April 16, 1981, an informal meeting was held at the Division of Wildlife Resources between Wildlife Resources and Great Salt Lake Minerals and Chemicals Corporation ("GSL"). The purpose of the meeting was to discuss proposed expansion by GSL of its solar ponding developments on the east shore of the Great Salt Lake. GSL has held several leases in this area since about 1965 and has gradually increased its evaporative ponding operations. GSL now desires to develop certain areas which are under lease in Township 7 North, Ranges 3, 4, and 5 West. Wildlife Resources stated its opposition to expansion of solar evaporators north of a line running East and West and separating Sections 24 and 25, Township 7 North, Ranges 3, 4, and 5 West, Salt Lake Base and Meridian.

One of the principal conclusions of this meeting and the reason for my writing to you was that Wildlife Resources desired to have pertinent leases and legal documents reviewed by you as their legal counsel, to assist them in arriving at a decision. It is my understanding that Mr. Douglas F. Day, Director of the Division of Wildlife Resources, will be getting in touch with you to outline his desires with respect to your involvement.

This letter is being sent to assist you in your review of the legal ramifications of expansion. We also attach copies of

certain relevant documents. GSL is endeavoring to work with Wildlife Resources and make its expansions in such a way that waterfowl use of the subject lands will be enhanced or that environmental impact on the area be minimized. GSL has consulted with Wildlife Resources to this end.

Authority of Division of Wildlife Resources and Division of State Lands

As you know, the Board of State Lands has authority to lease state lands under Utah Code Ann. § 65-1-14, 15, 18 and 24 (1953). The Board of Wildlife Resources is authorized to use certain state lands, including those which are pertinent to the present dispute, under Utah Code Ann. § 23-21-5 (1953), for wildlife management.

Lease Background

GSL is Lessee under three particular leases which are pertinent to the present discussions. Those leases are ML 22782 (Attachment A-1), ML 24631 (Att. B-1), and ML 25859 (Att. C-1). The latter two leases cover some lands north of the East-West "non-development" line.

ML 22782

Lease ML 22782 (Att. A-1) was entered into on August 24, 1966, between the State Land Board and GSL. The lease appears to be a re-issuance of an earlier lease bearing the same number (ML 22782), issued to Lithium Corporation of America, and dated April 23, 1965. Issuance of the lease was based on a stipulation which was proposed by Fish and Game in a letter dated April 14, 1965, to the State Land Board (Att. A-2). The Land Board recites the stipulation (Att. A-3) in the minutes of its meeting of April 23, 1965 (Att. A-4), approving issuance of Lease ML 22782 to Lithium Corporation. Basically, it provides that development will not be undertaken until Lithium Corporation has submitted detailed development plans and the Director of Fish and Game has approved the plans.

The last clause of the stipulation is worth quoting:

"That the Lessee will abide by any and all rules and regulations of the State Fish and Game Commission, provided such rules and regulations are not inconsistent with the intent of or with any express or specific conditions of this lease."

The implication of the clause is that after the Fish and Game Commission has approved issuance of the lease, the intent and provisions of the lease take precedence over the determinations, and even the regulations, of Fish and Game. The

desires of Fish and Game will be recognized and catered to by way of prior approval of development, but the intent of the lease will be honored.

It is GSL's position that Wildlife Resources is to be consulted regarding development plans under Lease ML 22782, and Wildlife Resources has a general power to approve or suggest development modification, but it does not have the power, at this late date, to deny development of the lands. To do so violates the intent of the lease.

ML 24631

With respect to Lease ML 24631 (Att. B-1), we call your attention to correspondence (Att. B-2) from John E. Phelps, Director of the Department of Fish & Game (predecessor to Wildlife Resources), in which Mr. Phelps refers to the lease, describes the lands covered, and states: "the Division of Fish and Game would have no objections to the Board issuing this lease." The letter is dated September 19, 1967. The lease was issued October 2, 1967. It appears that the approval of Fish and Game paved the way for the issuance of the lease. It is GSL's position that it may develop the lands covered by ML 24631 without consultation with Wildlife Resources. That division has been consulted as a courtesy and out of a desire to develop the lands in a manner which may enhance the use of the lands by waterfowl, if that is possible.

ML 25859

The approval of the Fish and Game Division was more difficult to obtain for a Lease ML 25859 (Att. C-1). In that case, it appears that certain land exchanges were made by GSL in order to obtain Fish and Game approval. We call your attention to the agreement dated November 6, 1968, (two weeks prior to issuance of the Lease) between GSL and Fish and Game (Att. C-2). That Agreement provides:

1. Fish and Game consents to issuance of a mineral lease to GSL for lands containing 10,583 acres.
2. Upon issuance of the lease, GSL will relinquish to Fish and Game:
 - a. Lease Application MLA 24881, containing 11,943 acres.
 - b. Portions of Lease ML 24189, said portions containing 5,440 acres.
 - c. Portions of Lease ML 21708, said portions containing 1,647 acres.

3. Fish and Game grants to GSL a first right of refusal to lease the relinquished lands.

4. GSL is granted an easement to cross over Fish and Game lands for purposes of access to GSL leased lands.

In effect, it appears that Fish and Game approved issuance of ML 25859, containing 10,583 acres, only if GSL would relinquish 7,087 acres of already leased lands and relinquish its right to lease 11,943 acres of other lands.

Please note that the approvals granted by Fish and Game for Leases ML 24631 and ML 25859 are not subject to any future right of that division to review or veto development plans by GSL. The approvals are blanket approvals. However, Mr. Day, Director of the Division, informed us at the meeting that he had believed that Fish and Game held a right of prior approval of development under a stipulation entered into between Fish and Game and GSL. I believe Mr. Day is referring to the ML 22782 stipulation. Our review indicates that the stipulation applies only to Lease ML 22782.

It goes almost without saying that, absent special circumstances or agreements which we have not discovered, GSL has a contract with the State of Utah. GSL made an offer to lease the lands subject of the present dispute. The state made a counteroffer that 10,583 acres could be leased, but only if MLA 24881, covering 11,943 acres, be withdrawn and portions of ML 24189, covering 5,440 acres, and portions of ML 21708, covering 1,647 acres, be relinquished to the state. GSL accepted the counteroffer, the agreement of relinquishment was memorialized in writing and accepted by the State Land Board. The lease, or contract, was then issued.

In 1973, Mr. Harold Andrews, of GSL, met with John E. Phelps of the Division of Wildlife Resources regarding proposed expansion of certain GSL ponding systems under Lease ML 25859, said expansion to take place in Sections 17, 18, 19 and 20, Township 7 North, Range 3 West, and Sections 13, 14, 23, and 24, Township 7 North, Range 4 West, Salt Lake Base and Meridian. We attach hereto (Att. C-3) a copy of a letter dated May 17, 1973, which confirms an agreement made at a meeting held May 15, 1973. The letter states that Wildlife Resources consented to construction of ponds on those lands so long as: (1) about 600 acres of ponding in Sections 17 and 20 (and as detailed on a rough map attached to the letter) be deleted from construction plans; and (2) GSL prohibit use of its private dikes for hunting access. These agreements and concessions by GSL were courtesies extended to the Division of Wildlife Resources. GSL desires to construct its ponds and develop its lands in a means which will enhance the waterfowl environment on the east shore of the Great

Salt Lake or, if that is not feasible, to develop its lands in such a way that the environment is impacted as little as is practically possible.

Nothing in the leases or the approval letters and agreements signed by Fish and Game when leases ML 24631 and ML 25859 were issued indicates that the leases could be issued, but that construction of ponding facilities on the leased lands would be subject to Fish and Game approval. Yet, the Division of Wildlife Resources seems to believe that it holds such a veto power. It appears to us that Wildlife Resources may have confused its right to prior approval of development under the stipulation attached to Lease ML 22782 to apply also to Lease ML 25859 and Lease ML 24631.

The foregoing is presented to you for your information and to provide a starting place for your examination of the pertinent lease files. We are certain you will find, as we have, that there are many other relevant documents in addition to those attached hereto. We do believe that the conclusion of this matter will be that the State of Utah has a duty to honor these leases and to allow GSL to commence construction of its evaporative ponds in the near future. Your expeditious review of this matter is greatly appreciated.

A copy of this letter is being forwarded to Mr. William K. Dinehart, Director of the Division of State Lands, for his information.

On behalf of my client and speaking for myself, I trust that we will be able to satisfy Wildlife Resources concerns and that this matter will be resolved in an amicable manner.

Very truly yours,

NIELSEN & SENIOR


Thomas L. Monson

TLM/cw

Enclosures

cc: Peter Behrens, President,
Great Salt Lake Minerals and Chemicals Corp.
✓ William K. Dinehardt, Director,
Division of State Lands